IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION No. 4745 OF 2007

M.S.R.T.C.
v.
Sudhakar Haribhau Dade & anr.

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mrs. Maldhure Advocate for the Petitioner.

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CORAM: A.B. CHAUDHARI, J.
DATED : 1st NOVEMBER, 2007.

Heard Mrs.Maldhure, learned counsel for petitioner. An order made by the Industrial Court awarding 25% of back wages to the respondent – employee, reversing the finding of denial of back wages, is under challenge in the present writ petition. One of the grounds for refusing back wages by the Labour Court was that the respondent did not try to search other job as the matter was sub-judice in labour court.

2. The learned counsel for the

petitioner argued that looking to the past record of the respondent and the fact that he did not search for the job on the pretext that a litigation was pending in the court, did not entitle him to any amount of back wages and, therefore, she finds fault with the order made by the Industrial Court awarding 25% back wages.

3. Having heard the learned counsel and having gone through the impugned order, it clearly appears that the respondent pleaded and proved that he was not in gainful employment and was not having any source of income. His admission that he did not try to search other job because the complaint was pending before the Labour Court, is wholly irrelevant for deciding the issue of back wages. It is not necessary that the employee must search for job during the pendency of the complaint. No sooner an employee pleads and proves that he was jobless and did not

have any source of income during the course of out of employment, the burden shifts on the employer. In the instant case, the employee has discharged his burden. Award of the back wages is only to the extent of 25% and the said Award appears to have been made at that rate looking to the past record of the respondent. The judicial discretion exercised by the revisional court in awarding only 25% back wages cannot be interfered with in writ jurisdiction. Hence, I am not inclined to interfere with the same. Writ petition dismissed.

JUDGE

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